



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

January 26, 2018

Henry Johnson
Vital Care Industries, Inc.
7650 W. 185th St. Suite C
Tinley Park, IL 60477

Keeva Shultz
Agent for Zappa-Tec LLC
Wagner Regulatory Associates, Inc.
P.O. Box 640
7217 Lancaster Pike, Suite A
Hockessin, Delaware 19707

Dear Mr. Johnson and Ms. Shultz:

It has been brought to the Agency's attention that "Super Solidifier Plus," the distributor product name identified in your October 17, 2017 letter and accompanying Notice of Supplemental Distribution of a Registered Pesticide Product (Distributor Product #: 87708-1-87983), was previously trademarked by another registrant, and has been used by that other registrant since 2011 as a registered alternate brand name for a pesticide product (EPA Reg. No. 86042-1). Labeling your distributor product with a name that has been registered and trademarked by another registrant to identify a different pesticide product is likely to mislead consumers. As specified in 40 C.F.R. § 156.10(b)(2)(i), product names which are false or misleading may not appear on pesticide product labels. Although a company has the discretion to name its pesticide product, it cannot select a name that is false or misleading.

As a result, the distributor product name "Super Solidifier Plus" should be changed immediately. The supplemental distributor may use the same product name as the registered product (in this case, "Zap-Out"), or a different product name, provided that the name is not misleading. See 40 C.F.R. § 152.132(d)(1). Failure to change the distributor product name may result in referral to the Office of Enforcement and Compliance Assurance (OECA) for possible enforcement action. OECA has been made aware of this issue and has been copied on this correspondence.

Moreover, please note that under 40 C.F.R. § 152.132, the distributor of a pesticide product is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. It is for this reason that we have included Keeva Shultz, as agent for Zappa-Tec, as an addressee on this letter.

If you have any questions, you may contact the Product Manager, Demson Fuller, at fuller.demson@epa.gov or 703-308-8062.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose Kyprianou". The signature is fluid and cursive, with the first name "Rose" written in a larger, more prominent script than the last name "Kyprianou".

Rose Kyprianou
Chief, Regulatory Management Branch II
Antimicrobials Division (7510P)
Office of Pesticide Programs

CC:

Adrienne Trivedi, Attorney, Office of Enforcement and Compliance Assurance
John Hebert, Acting Chief, Pesticides and Tanks Enforcement Branch, Office of Enforcement and Compliance Assurance
Chris Kaczmarek, Office of General Counsel
Elizabeth Thaler, Office of General Counsel